

IN THE INCOME-TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI
BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 919/Mum/2014 (Assessment Year 1998-99)

(Late) Mrs. Alexander A.E. Through Executor Mrs. Blossom V. Rodriguez, Alexander house, 70, Pali Hill, Bandra (West), Mumbai-400050. PAN: AENPB8485R	Vs.	ITO -19(3)(1), Piramal Chamber, Lalbaug, Parel, Mumba-400012.
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Appellant

Respondent

Appellant by : Shri Ashok J. Patil (AR)

Respondent by : Shri Manish Singh (DR)

Date of Hearing : 21.06.2019

Date of Pronouncement : 26.06.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by the Executor/assessee directed against the orders of Id. Commissioner of Income-tax (Appeals)-30, Mumbai [hereinafter referred as Id. CIT(A)] dated 06.11.2013 for Assessment Year 1998-99. The assessee has raised the following grounds of appeal:

1] On the facts and circumstances of the case and in law the Commissioner of Income Tax (Appeals) [CIT(A)] erred in holding that the reopening of the assessment u/s 147 rws 148 was valid.

2] On the facts and circumstances of the case and in law the CIT(A) erred in confirming the addition of Rs. 13,87,00/- made by the AD on the basis of the VDIS declaration made by the (deceased) Appellant.

3] On the facts and circumstances of the case and in law the CIT(A) failed to appreciate that the copies of the VDIS declaration made by the (deceased) Appellant were not provided by the Income Tax Department, be it the AO, the

CIT or the CIT(A) himself, in spite of there being a directive given by the jurisdictional High Court, which is in clear violation of the principles of natural justice.

2. The appellant vide application dated 20.12.2017 raised the following additional ground of appeal:

“The appellant craves leave to raise an additional Ground of appeal. The ground goes to the root cause of the Appellant’s case as it challenges the jurisdiction of the Assessing Officer, as the notice u/s 148 has not been issued on the Legal Heir/Executor of (Late) Mrs. Alexander AE. ”

3. Brief facts of the case are that a notice under section 148 dated 30.03.2015 was issued to Mrs. Alexander A.E on 30.03.2005 served on 31.03.2005. The said notice under section 148 was replied vide reply dated 29.09.2005 by Mrs. Blossom V. Rodriguez (appellant). In response to the notice, the appellant submitted that Mrs. Alexander A.E. expired on 18.12.2004 and furnished the copy of death certificate. It was further stated that the notice was served after expiry of six year from the end of relevant Assessment Year i.e. 1998-99 and thus same is invalid. It was further stated that the notice was served in the name of dead person and the same is invalid and void ab-initio. It was further stated that as per Will of Mrs. Alexander A.E., her daughter Mr. Blossom V. Rodriguez is the Executor of Will. In alternative and without prejudicial submission, the assessee/representative of assessee requested for 30 days time for filing return and stated that deceased assessee had no income except interest on Saving Bank Account which is subject to deduction under section 80L.

4. The Assessing Officer proceeded to make reassessment and recorded that reasons recorded were communicated to assessee on 13.10.2015. The Assessing Officer in para-2 of his order extracted the reasons recorded, wherein the Assessing Officer recorded that deceased assessee declared asset of Rs. 13,87,000/-, to check whether assessee who have availed the facility of VDIS are still continued to file the return of income or subsequently stop filing or return of income. Hence, all voluntary discloser income scheme (VDIS) cases were reopened on the recommendation of standing committee with the previous approval of CIT-XIX, therefore, the assessee was called for filing acknowledgement of Assessment Year 1998-99 to 2004-05 and copy of certificate issued for VDIS.
5. The Assessing Officer further noted that representative of assessee seek time on various date. The Assessing Officer treated the income declared by assessee in VDIS as Income from 'Other Sources' for Assessment Year 1998-99 and passed the assessment order on 07.03.2006 under section 144 r.w.s. 147. On appeal before the Id. CIT(A), the action of Assessing Officer on reopening as well as on merit was confirmed. Thus, further aggrieved by the order of Id. CIT(A), the assessee filed the present appeal before us.
6. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Department Representative (DR) for the revenue and

perused the material available on record. The ld. AR of the assessee submits that no copy of reasons recorded was provided to the assessee. The assessment was re-opened after six years from the end of relevant Assessment Year. After hearing the parties at preliminary stage, we directed the ld. DR for the revenue to call the assessment record. The assessment record was produced before the bench on 28.11.2017.

7. With the assistance of the ld representatives of the parties, we examined the assessment record. On perusal of assessment recorded, it was revealed that reasons recorded were not available in the assessment folder brought by ld. DR for the revenue. Therefore, after recording our observation in the order-sheet on 28.11.2017, the hearing of appeal was fixed on 21.12.2017 and from time to time and finally heard on 21.06.2019.
8. The ld. AR of the assessee submits that the appellant made request to the assessing officer to provide the copy of VDIS declared by the deceased assessee; however, despite persuasion the appellant was not provided the desired document. The appellant filed Civil Writ petition before Bombay High Court vide WP No. 2384/2009 for direction to the revenue authorities to provide the copy of the VDIS declaration by deceased assessee. The Hon'ble High Court, vide order dated 03.02.2010 directed the appellant to apply copy VDIS same before the authorities concerned and directed revenue to consider the appellant application before taking any step in proceedings. The appellant applied for the copy with the

revenue authorities but no copy of VDIS is supplied to the appellant. The assessee was not having any copy of VDIS filed by deceased assessee.

9. It was further submitted by Id. AR for the appellant that the reopening is bad in law as no notice was issued on the legal heirs of the assessee. the notice issued under section 148 dated 30.03.2005 was issued against the dead person. In alternative submissions the Id AR for the appellant submits that no prior permission of Joint Commissioner was obtained before reopening as mandated under section 152 of the Act. The Id. AR submits that the assessment order is invalid and the proceedings are void ab initio. And is liable to be declared as such.
10. On the other hand, the Id. DR for the revenue supported the order of authorities below.
11. We have considered the submission of both the parties and have gone through the orders of lower authorities. The Assessing Officer issued notice under section 148 dated 30.03.2015 for Assessment Year 1998-99. The notice was issued in the name of dead person. In response to the notice under section 148, the Executor of deceased assessee intimated that the assessee has expired on 18.12.2014 and furnished the copy of death certificate issued by Municipal Corporation, Greater Mumbai. The Assessing Officer despite informing about the death proceeded to complete the assessment. The action was initiated against the dead person. It is settled law that no proceeding can be initiated against the dead

person. Therefore, in our considered view the action initiated by assessing officer was bad in law.

12. Further, we have noted that the Assessing Officer in para-2 of assessment order has recorded the reasons of re-opening, which were allegedly communicated to the assessee on 13.10.2005. the assessment was completed by Income-tax Officer ward-19(3)-1 Mumbai. Though, the Id. AR for the appellant disputed that no reasons recorded were communicated to the appellant. The alleged reasons as extracted in para - 2 of the assessment order, does not indicate that any prior approval of Joint Commissioner as required under section 152 was obtained. In absence of proper sanction by JCIT, the alleged reasons of re-opening are itself bad-in-law.

13. As we have held that initiation of action by issuance of notice under section 148 on the dead person and no prior permission/ approval of JCIT was obtained, hence, the assessment order as invalid, therefore, adjudication of case on merit have become academic.

14. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 26/06/2019.

Sd/-

G.S. PANNU

VICE-PRESIDENT

Mumbai, Date: 26.06.2019

SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

3. The concerned CIT(A)
4. The concerned CIT
5. DR "A" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**